IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CRIMINAL APPLICATION No 469 of 1997

with

SPECIAL CRIMINAL APPLICATIONS No 470 and 471 of 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GOVERNMENT OF GUJARAT

VERSUS

YAKUB ISHAQ HARI

Appearance:

1. Special Criminal Applications No. 469 & 471 of 1997
MR SAMIR DAVE, APP, for Petitioners
MR DM THAKKAR for Respondents

2. Special Criminal Application No. 470 of 1997
MR SAMIR DAVE, APP, for Petitioners
None present for Respondents

CORAM : MR JUSTICE S.K. KESHOTE

Date of Decision : 09/02/2001

C.A.V. JUDGMENT

1. All these three matters are taken up for hearing together and are being decided by this common order for the reason that the facts as well as the grounds of challenge to the order of the Sessions Judge, Vadodara made in three criminal appeals which had arisen from the order of the Deputy Conservator of Forests, Chhota-Udepur of confiscation of vehicle in connection with the forest offence by the respondents are the same and the orders of the Sessions Judge are also stereotype.

2. Leading arguments have been raised by Shri D.M. Thakkar for the respondents with reference to the special criminal application No. 469/97 and as such the facts and grounds of challenge to the order of the Sessions Judge, Vadodara are taken up from this petition. The respondent claims himself to be the owner of the truck No.GJ-7T 7226. This truck was intercepted on 2-7-96 on Kesarpur-Kashipura Road by the Forest Officers and on inquiry it was found to be transporting the contraband forest articles viz. 56 longs of teak wood of different sizes. the necessary panchnama was made and the forest produce contained in the said vehicle was seized and the truck as well was seized. After seizure of the teak wood and the truck and after recording the statements of the driver concerned, notice dated 26-11-1996 were given to the owner of the truck as well as the owner of the teak wood to show cause as to why the said contraband teak wood and the truck should not be confiscated. Pursuance to the same, the owner of the truck and the teak wood filed their written objections. After considering the written objections and the statement of the driver and the relevant panchnama, the Deputy Conservator of Forests, Chota Udepur came to the conclusion that the said teak wood was illegally cut from forest area and being transported in the said vehicle of the respondent without pass or permit. It is further held that the offence has been committed under the Provisions of the Indian Forests Act and in exercise of the powers as conferred upon him under section 61 (2) of the Indian Forest Act as amended by the Gujarat Amendment Act, 1983, he ordered for the confiscation of the truck as well as the forest produce loaded therein and passed the order dated 4-12-1996 accordingly for confiscating the truck of the respondent as well as the forest produce loaded therein. Being aggrieved and dissatisfied with the order of the Deputy Conservator of Forests, Chaeta Udepur dated 4-12-1996, the respondent to the extent it relates to the

confiscation of the truck, filed an appeal before the Sessions Court, which came to be decided on 4-4-1997. The appeal was allowed in part and the order of the Deputy Conservator of Forests, Chhota Udepur dated 4-12-1996 confiscating the truck was modified and substituted by the direction to the respondent therein to take penalty in the sum of Rs.25,000/within a period of thirty days thereof. Hence, this special criminal application before the Court.

3. On 5-5-1997, the petitions were admitted and by way of interim relief it is directed that the truck in question bearing No. GJ-7 T 7226 be released and handed over to the respondent on furnishing a personal bond of sum of Rs.75,000/- with one surety of the like amount to the satisfaction of the Deputy Conservator of Forests, Chhota-Udepur for production of the vehicle as and when he is called upon to do so. It is further ordered that the respondent will furnish an undertaking that he will not transfer or alienate the said vehicle and that he will not make any substantial change in the vehicle till further orders.

4. The reply to the special criminal application is not filed by the respondent.

5. Learned counsel for the petitioners contended that the order of the Sessions Judge, Vadodara is wholly perverse and it is a fit case where this Court may interfere with the order under Article 227 of the Constitution of India. It has next been contended that even if it is taken that under section 61 (D) of the Act aforesaid, the appellate court, here the Sessions Judge, is empowered to modify the order passed by the Forest authority under section 61-A, this power is to be exercised judiciously and not in a routine way. In the case in hand, what Shri Samir Dave, learned A.P.P. contended that the learned Sessions Judge has not given out any cogent and justified grounds to modify the order passed by the Deputy Conservator of Forests, Chhota-Udepur of confiscation of the truck.

6. On the other hand, learned counsel for the respondent contended that this Court under Article 227 of the Constitution has very very limited power of judicial review. It is a supervisory jurisdiction of this Court over the subordinate court and the learned Sessions Judge passed a just and reasonable order and in the facts of this case, this Court may not interfere therewith. In support of his contention, Shri Thakkar, learned counsel for the respondent placed reliance on

the decision of the Apex Court in the case of Mohd. Yunus vs. Mohd.Mustaqim reported in AIR 1984 SC 38 and the decision of this Court in the case of N.K. Chavda vs. Range Forest Officer reported in 1993 (1) GLR 948.

7. However, on being put by the Court, learned counsel for the respondent submitted that he is not in a position to say what was the make of the truck and the year of the make of the truck as well as the depreciated value of the truck or the market value of the truck on the day on which the same was ordered to be confiscated.

8. I have considered the rival submissions made by the learned counsel for the parties and carefully gone through the judgment of the learned Sessions Judge, Vadodara impugned in these special criminal applications. If we look at the reasons give by the learned Additional Sessions Judge, Vadodara for modification of the order passed by the Deputy Conservator of Forests, Chhota-Udepur, I am satisfied that the same are wholly irrelevant and of any substance. From the judgment of the learned Sessions Judge, I find that he made reference to the affidavit of the respondent wherein he stated that he is a poor man. It is further stated that the driver concerned must have loaded the forest produce therein without his knowledge and in future he will take appropriate care and caution and see that such type of offence is not repeated. Before the learned Sessions Judge, the counsel for the respondent placed reliance on the decisions, one of the Apex Court in the case of State of Andhra Pradesh vs. Yedla Perayya, reported in AIR 1970 SC 718 and the decision of this Court in the case of State of Gujarat vs. Narayan Rao Anand Rao Survey reported in 24 GLT 335 and that of Kerala High Court in the case of K.R. Pushpan vs. State of Kerala reported in AIR 1985 Kerala 184. After referring to the aforesaid decisions and the affidavit of the respondent, learned Sessions Judge opined that the order passed by the Deputy Conservator of Forests, Chhota-Udepur is harsh and severe looking to the gravity of the offence and accordingly it is modified. In para-26 of the judgment, learned Sessions Judge, observed, no doubt, the value of the seized teak wood was substantial but compared to the value of the truck in question it can be said to be negligible because the value of the truck in question would run into lacs of rupees.

9. From the reading of the judgment of the learned Sessions Judge, I find that there were three things which have been taken into consideration by him for

modifying the order passed by the Deputy Conservator of Forests, Chhota-Udepur of confiscation of the truck in question. First is that the value of the seized teak wood though was substantial but compared to the value of the truck in question it can be said to be negligible, and the three decisions aforesaid and third, is that affidavit of the respondent wherein he has stated himself to be a poor person. He stated that the driver concerned must have loaded the forest produce therein in the truck without his knowledge and last that in future he will take appropriate care and caution and see that such type of offence is not repeated.

10. The fact that the respondent is a poor person, it is suffice to say that only on the basis of his affidavit, more so, when he is registered owner of a truck, it is difficult to accept. Moreover, how far it is justified and correct on the part of the respondent to state himself to be a poor person when he is admittedly a registered owner of the truck. In support of his this factual averment made, the respondent has not produced any material before this Court also. So there is no material on the record of this special criminal application except what it is referred from the affidavit filed by the respondent by the learned Sessions Judge in support of the fact that the respondent is a poor person. There cannot be any presumption of fact that a particular person is a poor person. Moreover, in case the owner of the truck claims himself to be a poor person and is indulged in forest offence, how far it is correct and justified and in the larger interest of the public and ecology of the country to interfere with the order passed by the Deputy Conservator of Forests, for confiscation of the truck involved in this offence. Secondly, even if a person is poor, only on this ground how the order passed by the Deputy Conservator of Forest, Chhota-Udepur could have been interfered with by the learned Sessions Judge. If a poor person is involved in nefarious activity or he is a criminal or he has committed serious offence like the forest offence, which not only affect the forest deposit of the country but is a serious danger to the ecological security of the country he has to be severely dealt with.

11. The other ground given that the driver concerned must have loaded the forest produce in the truck without the knowledge of the respondent, it is suffice to say that this fact stated by the respondent in the affidavit has no relevance to take a lenient view in the matter and modifying the order of the confiscation of truck by

imposing penalty of Rs.25,000/-. The learned Sessions Judge has rejected this contention of the learned counsel for the respondent that in the motor truck, the teak wood was transported without his knowledge. Reference here may have para No.15 of the judgment of the learned Sessions Judge. Once the learned Sessions Judge has not accepted this contention of the respondent that the driver has transported the contraband forest produce in the truck without his knowledge, how far it is justified for the learned Sessions Judge to rely on this circumstances on the basis of what it is stated in the affidavit to take it to be a mitigating circumstances and modify the order of confiscation of truck by imposing penalty of Rs.25,000/-.

12. So far as the statement made by the respondent that in future he will take appropriate care and caution and see that such type of offence is not repeated, is concerned is hardly of any relevance in the matter. Such type of undertakings can be given by anybody who has come up before the Court seeking indulgence to the extent of getting his truck released which has been confiscated in connection with the forest offence committed. What is the guarantee otherwise also that the statement will be adhered to in future. It is unfortunate that the officers of the impersonal machinery, the State of Gujarat, are not in a position to bring any fact on the record as they have no personal interest in the matter otherwise there may be possibility that this respondent would have further indulged into this activity after this confiscation also.

13. So far as the three decisions on which reliance has been placed by the counsel for the respondent before the learned Sessions Judge are concerned, it is suffice to say that the Apex Court's decision is relevant only to the extent that the appellate court i.e. the Sessions Court here, under section 61 D of the Act aforesaid may have the power to modify the order passed by the Deputy Conservator of Forests, Chhota-Udepur under section 61-A of the Act. The Forest Officer may not have any option except to order for confiscation of the vehicle where he is satisfied that the same is involved in forest offence but this bar put on the power of the Deputy Conservator of Forest may not be there on the appellate court. Second case on which reliance has been placed of this Court is also of any relevance or of help to the respondent. There, the Forest Officer, ordered confiscation of the vehicle in connection with the forest offence but this Court has not interfered

with the order passed by the court below. Each case has to be decided on its own facts and in case where this Court has not interfered in the matter on the basis of the facts of that case, how far it is relevant to the case in hand. Now I may refer to the decision of the Kerala High Court. It is difficult to accept in view of the provisions of law as contained in section 61-A of the Act that the value of the contraband forest produced carried in the vehicle is negligible in comparison to the value of the vehicle the order of confiscation of the vehicle is illegal and unsustainable. I do not find any provision in the Act where it is provided as what it is held by the Kerala High Court. Each case depends on its own facts and it cannot be taken to be statutory law that where the value of the contraband forest produce carried in the vehicle is negligible as compared to the value of the vehicle, the confiscation of the vehicle is illegal or unsustainable.

14. In this case, otherwise also, the decision of the Kerala High Court is of little help to the respondent. It is not the finding of the learned Sessions Judge that the value of the seized contraband forest produce was negligible in comparison to the value of the truck and it is also not held by the learned Sessions Judge that in such case the order of confiscation of the vehicle is illegal or unsustainable. Learned Sessions Judge has held that the value of this seized teak wood was substantial. However, he compared the value of the seized contraband forest produce with the value of the truck and on comparison he held that the value of the seized teak wood is negligible. The value of the truck was stated to be running into laces of rupees. The learned Sessions Judge has not given out what was the value of the teak wood seized and what was the value of the truck seized on the date of the seizure thereof by the Forest Officer. Considering these facts coupled with the fact that on the record, the make of the truck, the year of the make of the truck and the value of the truck is not there it is only on the basis of the statement recorded in the judgment, the interference in the order of the Deputy Conservator of Forests, Chhota-Udepur made by the learned Sessions Judge, is wholly perverse and arbitrary. Such a perverse order cannot be allowed to stand otherwise it will endanger the ecological security of the country as well as it is not in the larger interest of the citizens of the country. Without giving the facts, leaving apart whether it may be a relevant consideration or not, this judgment has been given which is nothing but a perverse decision. The Learned Sessions Judge should have given

out the value of the seized contraband forest produce and of the truck and thereafter, he could have made the comparison and could have decided the matter on merits. It cannot be taken to be law that in all the cases of confiscation of the vehicle which is found to be carrying contraband forest produce, release of the vehicle is a rule and confiscation thereof to be an exception. In the forest offences committed, the courts should not act liberally and should not go by this impression that where the value of the contraband forest produce seized is negligible in comparison to the value of the vehicle, rule should have been the release of the vehicle. The Forest Conservation Act, 1980 was enacted with a view to curb further deforestation which ultimately results in ecological imbalance. The provisions are made in the Act aforesaid for conservation of the forest and for matters connected therewith. Indiscriminately the cutting of the forests produce is in process at the hands of unscrupulous persons who are only concerned with their own interest, economic interest at the cost of ecological security of the country. The forests offences are increasing day by day. The reason may not be very far to trace out. Since the beginning of the 20th century or even prior to that, forests have been diverted for settlement, agricultural, tea, coffee plantations, industries development and such other purposes. Whatever forest remained, was subjected to heavy utilisation by the Government agencies, public at large and criminals and smugglers. Taking advantage of the inadequately armed forces of the Department and price ingredient in the market, smugglers have played havoc with the forest resources. There may be two class of forest offenders that one comes across. One is the poor and needy who break the rules to keep their heart burning as they have no other alternative even in the near future. The other class of forest offenders are generally criminals who indulge in law breaking activities. Forest to them is a gold that is meant to be cut. These offenders and smugglers are not concerned with the ecological security of the country. To deal with these persons, even our laws as stand today appear to be inadequate but whatever laws are there with which the forest department has to proceed against these persons, and it is important for all concern to see that in the matter of forest offences, lenient views are not warranted. It is told that total deposits of the forest wealth of the country is reduced to danger point and for this reduction appear from other causes which may be legal or justified, one of the important causes is these activities of forests offenders as well as smugglers.

15. The power of this Court to interfere with the order of the Court below or Tribunal under Article 227 of the Constitution is certainly restricted but if the judgment of the Court below is wholly perverse and arbitrary then certainly interference can be made therein and it can be set aside.

16. Here it is a case of forest offence and the learned Sessions Judge has also not accepted the plea of the respondent that his driver has carried this contraband forest produce without his knowledge and connivance, how far it is justified that the order of confiscation made of the truck has to be modified. Power vests in the appellate court under section 61 D of the Act aforesaid to modify the order of the Forest Officer, which is not to modify the orders in all the cases. There must be some very strong and cogent circumstances which justifies the interference with the order of the Forest officer but not as a rule. If we go by the impugned orders which are coming up before this Court for consideration under Article 227 of the Constitution, in the forest offences where the vehicle was ordered to be confiscated by the Forest Officer and release there of by the appellate court, I find consistently that the Sessions Courts have taken it to be rule to release the vehicle and exception to be the confiscation. That is not the law. In the exceptional cases only, it is understandable that the order of the Forest Officer confiscating the vehicle may be modified but not in all the cases. Here, in this case, the involvement of the vehicle is there in the forest offence and it is not accepted that the respondent is an innocent persons. I fail to see any justification in the approach of the learned Sessions Judge to make interference with the order of the Forest Officer confiscating the vehicle of the respondent.

17. As a result of the aforesaid discussion, all these three special criminal applications succeed and the same are allowed. The orders of the learned Sessions Judge impugned in these special criminal applications are quashed and set aside. Rule is made absolute accordingly in all the three special criminal applications. The respondent in these three matters are directed to pay Rs.2000/- each as costs of these petitions to the State of Gujarat.

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